

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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TAHIR L. TOOMBS,

Plaintiff,

Civil Action No.:

-against-

AMERICAN RED CROSS and BENJAMIN USECHE,

**NOTICE OF REMOVAL**

Defendants.  
-----X

**TO: THE HONORABLE JUDGES OF THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

Defendants, AMERICAN RED CROSS and BENJAMIN USECHE, by their undersigned attorneys, file this notice to remove the foregoing case to the United States District Court for the Southern District of New York and respectfully show this Court:

1. On October 1, 2020, a civil action was commenced in the Supreme Court of the State of New York, County of New York, in which the above-named individual, TAHIR L. TOOMBS, is the Plaintiff, and the Defendants are AMERICAN RED CROSS and BENJAMIN USECHE. *See* Compl., dated October 1, 2020 (“**Exhibit A**”).

2. The action is *Tahir L. Toombs v. American Red Cross and Benjamin Useche*, bearing Index Number 150246/16. **Exhibit A**.

3. Service of the Summons and Complaint on Benjamin Useche was purportedly effectuated on November 4, 2020. *See* Aff. of Serv. for Benjamin Useche, dated November 4, 2020 (“**Exhibit B**”). Service of the Summons and Complaint on American Red Cross was purportedly effectuated on November 9, 2020. Aff. of Serv. for American Red Cross, dated November 9, 2020 (“**Exhibit C**”).

4. On November 25, 2020, Defendants, AMERICAN RED CROSS and BENJAMIN USECHE, filed their answer to the complaint. *See* Answer, dated November 25, 2020 (“**Exhibit D**”).

5. According to the complaint, Plaintiff TAHIR L. TOOMBS was allegedly struck and injured during a single-vehicle automobile accident in which there was alleged contact between Plaintiff TAHIR L. TOOMBS and a vehicle allegedly owned by Defendant AMERICAN RED CROSS and operated by Defendant BENJAMIN USECHE. **Exhibit A**, at ¶¶ 4-5, 19, 21. This accident, as alleged in the complaint, occurred on September 25, 2020, at the intersection of West 48<sup>th</sup> Street and Eighth Avenue in New York, New York. **Exhibit A**, at ¶¶ 16, 19.

6. The Defendants first received notice that this case was removable on November 9, 2020 (when Defendant AMERICAN RED CROSS was purportedly served with the Summons and Complaint, *see* **Exhibit B**), at which time it was determined that federal subject matter jurisdiction under 28 U.S.C. § 1331 exists over Defendant AMERICAN RED CROSS by virtue of 36 U.S.C. § 300105(a)(5).

7. In accordance with 28 U.S.C. §§ 1441(a) and 1446(b), this Notice of Removal is filed within 30 days after receipt of the Summons and Complaint by the Defendant AMERICAN RED CROSS, which received a copy of the Summons and Complaint on or about November 9, 2020. *See* **Exhibit C**.

### **JURISDICTION**

8. Federal subject matter jurisdiction under 28 U.S.C. § 1331 exists over AMERICAN RED CROSS by virtue of 36 U.S.C. § 300105(a)(5), a provision of its federal charter granting it the power to “sue and be sued in courts of law and equity, State or Federal, within the jurisdiction of the United States.”

9. The United States Supreme Court has construed the “sue-and-be-sued” provision of the AMERICAN RED CROSS’ charter as conferring “original jurisdiction on federal courts over all cases to which the Red Cross is a party, with the consequence that the organization is thereby authorized to remove from state to federal court any state-law action it is defending.” *American National Red Cross v. S.G.*, 505 U.S. 247, 248 (1992).

### **PARTIES**

10. Defendants are informed and believe that Plaintiff TAHIR L. TOOMBS is now, and was at the time of the filing of the Summons and Complaint in this action, and at all intervening times, a resident of the State of New York. *See Exhibit A*, at ¶ 1.

11. Defendant AMERICAN RED CROSS is now, and was at the time of the filing of the Summons and Complaint in this action, and at all intervening times, a corporation organized by act of the United States Congress in the District of Columbia, with its principal place of business in the District of Columbia.

12. Defendant AMERICAN RED CROSS desires to remove this action from the Supreme Court of the State of New York, County of New York, to the U.S. District Court for the Southern District of New York and therefore submits this Notice of Removal, along with exhibits attached hereto, in accordance with 28 U.S.C. §§ 1441(a) and 1446(a)-(b).

13. By filing this Notice of Removal, Defendants AMERICAN RED CROSS and BENJAMIN USECHE do not waive any defense that may be available.

14. A copy of this Notice of Removal will be given to Plaintiff TAHIR L. TOOMBS, through his counsel, Greenstein & Milbauer, LLP, promptly after its filing, as is required.

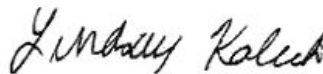
15. A true and correct copy of this Notice of Removal will be filed with the Clerk of the Supreme Court of the State of New York, County of New York, promptly after its filing, as is required.

WHEREFORE, Defendants AMERICAN RED CROSS and BENJAMIN USECHE pray that this action proceed in this Court as an action properly removed.

Dated: White Plains, New York  
December 3, 2020

Yours, etc.

WILSON, ELSER, MOSKOWITZ, EDELMAN & DICKER LLP



By: \_\_\_\_\_  
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